

## REAL ESTATE CONTRACT

THIS CONTRACT OF SALE is made by and between BOB R. DAVIS and wife, ERIN DAVIS, ("SELLER") and the CITY OF COLLEGE STATION, TEXAS, a Texas Home Rule Municipal Corporation, situated in Brazos County, Texas ("BUYER"), upon the terms and conditions set forth herein.

### ARTICLE I PURCHASE AND SALE

1.1 SELLER agrees to sell and convey in fee simple by a General Warranty Deed, and BUYER agrees to purchase and pay for a 0.536 acre tract being a portion of Lot 1A, Lacour Subdivision, shown as the future extension of George Bush Drive East, according to the Plat recorded in Volume 3510, Page 191 of the Official Records of Brazos County, Texas, more particularly described by metes and bounds in Exhibit "A" attached hereto and made a part hereof for all purposes ("PROPERTY"), together with all and singular the rights and appurtenances pertaining to the PROPERTY, including all right, title and interest of SELLER in and to adjacent roads, streets, alleys or rights-of-way (all of such real PROPERTY, rights, and appurtenances being herein referred to as the "PROPERTY"), together with SELLER's interest in any improvements and fixtures situated on and attached to the PROPERTY, for the consideration and subject to the terms, provisions, and conditions set forth herein. This Contract by BUYER to purchase the PROPERTY is subject to approval by the City Council of the City of College Station, Texas; such approval indicated by signature of BUYER's representatives to this CONTRACT OF SALE.

1.2 BUYER has requested Brazos County Abstract Company furnish a Commitment for Title Insurance (the "Title Commitment") to insure title to the BUYER for BUYER's review together with legible copies of all instruments referred to in the Title Commitment. The BUYER shall request the title company to furnish these items to BUYER within fifteen (15) calendar days of the date of this Contract. BUYER shall have a period of five (5) business days (the "Title Review Period") after receipt of the Title Commitment, the copies of the instruments referred to in Schedule B as exceptions, within which to notify SELLER of BUYER's objection to any item shown on or referenced by those documents (the "Reviewable Matters"). Any Reviewable Matter to which BUYER does not object within the Title Review Period shall be deemed to be accepted by BUYER. If BUYER objects to any such Reviewable Matter and gives notice to SELLER as provided herein, SELLER may at its election, on or before closing, attempt to cure same. If SELLER fails to cure same by the closing date, or is unwilling to cure same, the closing date shall be extended for five (5) business days for BUYER to either (a) waive such objections and accept such title as SELLER is able to convey or (b) terminate this Contract by written notice to the Title Company and to SELLER, in which case the earnest money shall be refunded to BUYER, and neither SELLER nor BUYER shall have any further rights or obligations under this Contract.

Page 1

Contract No. \_\_\_\_\_  
/o/group/legal/projects/geobushext/davis/realestk.doc  
Prepared byRN:jls; 05/16/01; Rev. 05/30/01

- 1.3 (a) The City of College Station, Texas, at its expense, will provide a survey of the PROPERTY, showing, without limitation, all adjacent property lines, record ownership of adjoining properties, encroachments, easements, rights-of-way and other encumbrances of record. The survey will reflect any encroachments onto or by the PROPERTY onto adjoining properties. BUYER shall have a period of five (5) business days (the "Survey Review Period") after receipt of the Survey within which to notify SELLER of BUYER's objection to any item shown on or referenced on the Survey. Any Reviewable Matter to which BUYER does not object within the Survey Review Period shall be deemed to be accepted by BUYER. If BUYER objects to any such Reviewable Matter and gives notice to SELLER as provided herein, SELLER may at its election, on or before closing, attempt to cure same. If SELLER fails to cure same by the closing date, or is unwilling to cure same, the closing date shall be extended for five (5) business days for BUYER to either (a) waive such objections and accept such title as SELLER is able to convey or (b) terminate this Contract by written notice to the Title Company and to SELLER, in which case any earnest money shall be refunded to BUYER, and neither SELLER nor BUYER shall have any further rights or obligations under this Contract.
- (b) The survey drawing shall be addressed to and certified in favor of the BUYER and the Title Company. The field notes description, as prepared by the surveyor, shall be used in the General Warranty Deed.

1.4 The parties agree that general real estate taxes on the PROPERTY for the then current year, interest on any existing indebtedness, and rents, if any, shall be pro-rated as of the closing date and shall be adjusted in cash at the closing. SELLER alone shall be liable for any taxes assessed and levied for prior years resulting from any change in use subsequent to the conveyance to BUYER. If the closing shall occur before the tax rate is fixed for the current year, the apportionment of taxes shall be upon the basis of the tax rate for the next preceding year applied to the latest assessed valuation. All installments that have matured prior to the closing date on any special taxes or assessments shall be paid by SELLER; and any installments that are provided in the special assessment to mature after closing shall be assumed by BUYER.

1.5 The sale of the PROPERTY shall be made by General Warranty Deed from SELLER to BUYER in the form prepared by BUYER attached hereto as Exhibit "B".

## ARTICLE II PURCHASE PRICE

2.1 The purchase price for said PROPERTY shall be the sum of ONE HUNDRED SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$175,000.00). The purchase price shall be payable in full at closing.

- 2.2 SELLER agrees that the compensation paid pursuant to this Agreement is in full satisfaction of BUYER's obligations under the Development Agreement dated March 25, 1996, filed in Volume 2722, Page 4 of the Deed Records of Brazos County, Texas, as amended on November 11, 1996, by Amendment to Development Agreement, Section III, filed in Volume 2773, Page 95 of the Deed Records of Brazos County, Texas.

ARTICLE III  
REPRESENTATIONS AND WARRANTIES OF SELLER

- 3.1 SELLER hereby represents and warrants to BUYER as follows:

- (a) SELLER has the full right, power, and authority to enter into and perform its obligations under this Contract.
- (b) SELLER has no actual knowledge of any parties in possession of any portion of the PROPERTY, either as lessees, tenants at sufferance, trespassers, or other persons in possession. Additionally, SELLER has no actual knowledge of any action by adjacent landowners, or any natural or artificial conditions upon the PROPERTY, or any significant adverse fact or condition relating to the PROPERTY, which has not been disclosed in writing to BUYER by SELLER, which would prevent, limit, impede or render more costly BUYER's contemplated use of the PROPERTY.
- (c) SELLER has no actual knowledge of any pending or threatened condemnation or similar proceedings or assessment affecting the PROPERTY or any part thereof. SELLER has no actual knowledge of any such proceedings or assessments contemplated by any governmental entity.
- (d) SELLER has no actual knowledge that the PROPERTY does not have full and free access to and from public highways, streets, or roads. SELLER has no actual knowledge that there are pending or threatened governmental proceedings that would impair or result in the termination of such access. If SELLER obtains actual knowledge of any such matter subsequent to the date of this Contract that would make any of the representations or warranties untrue if made as of closing, SELLER shall notify BUYER, and BUYER shall have the election of terminating the Contract and receiving back its earnest money, in which case neither party shall have any further obligation to the other.
- (e) The PROPERTY has not been illegally subdivided or otherwise held, managed, or maintained in violation of any federal, state, or local law.
- (f) SELLER has no actual knowledge that SELLER has not complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions relating to the PROPERTY or any part thereof.

- (g) If SELLER obtains actual knowledge of any such matter subsequent to the date of this Contract that would make any of the representations or warranties untrue if made as of closing, SELLER shall notify BUYER, and BUYER shall have the election of terminating the Contract and receiving back its earnest money, in which case neither party shall have any further obligation to the other.
- (h) SELLER has no knowledge that the PROPERTY contains any environmental hazard not shown on the environmental assessment provided by SELLER to BUYER.
- (i) SELLER is not a "foreign person" within the meaning of the Internal Revenue Code of 1986, as amended, Sections 1445 and 7701 (i.e., SELLER is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined in the Code and regulations promulgated thereunder).
- (j) To the best of SELLER's knowledge there are no unpaid charges, debts, liabilities, claims or obligations arising from any construction, occupancy, ownership, use or operation of the PROPERTY, or the business operated thereon, if any, which could give rise to any mechanic's or materialmen's or other statutory lien against the PROPERTY, or any part thereof, or for which BUYER will be responsible.

#### ARTICLE IV REPRESENTATIONS AND WARRANTIES OF BUYER

4.1 BUYER represents and warrants to SELLER as of the effective date and as of the closing date that:

- (a) BUYER has the full right, power, and authority to purchase the PROPERTY from SELLER as provided in this Contract and to carry out BUYER's obligations under this Contract, and all requisite action necessary to authorize BUYER to enter into this Contract and to carry out BUYER's obligations hereunder has been obtained or on or before closing will have been taken.

#### ARTICLE V CLOSING

5.1 The closing shall be held at Brazos County Abstract Company whose address is 418 Tarrow, College Station, Texas, within forty-five (45) calendar days from the execution and tender of this Contract by BUYER, at such time and date as SELLER and BUYER may agree upon (the "closing date").

5.2 At the closing, SELLER shall:

- (a) Deliver to BUYER the duly executed and acknowledged General Warranty Deed prepared by BUYER conveying good and indefeasible title in the PROPERTY, free and clear of any and all liens, encumbrances, except for the Reviewable Matters and subject to the BUYER's election to terminate this Contract in the event BUYER disapproves of any Reviewable Matter, which objection is to be cured by SELLER on or prior to the closing as provided by Article I of this Contract.
- (b) Deliver possession of the PROPERTY to BUYER.
- (c) Deliver to BUYER, at BUYER's expense, a Title Policy insuring marketable title issued by Brazos County Abstract Company, in BUYER's favor in the full amount of the purchase price, insuring BUYER's fee simple interest in the PROPERTY subject only to such exceptions as shown on the Title Commitment and not objected to by BUYER prior to closing.
- (d) Pay one-half (1/2) of the escrow fees.
- (e) Pay any and all required property taxes and prorated taxes for the year 2001.
- (f) Pay any and all homeowner's or maintenance fees for prior years and for the current year prorated up to the date of closing.
- (g) Pay the costs to obtain, deliver and record releases or partial releases of all liens to be released at closing.
- (h) Pay the costs to record all documents to cure title objections agreed to be cured by Seller.
- (i) Pay the certificates or reports of ad valorem taxes.
- (j) Pay the Seller's expenses and attorney fees.
- (k) ~~Pay the title insurance.~~ *BRD GSR*

5.3 Upon such performance by SELLER at closing, BUYER shall:

- (a) Pay the balance of the purchase price and the below-listed closing costs.
- (b) Pay one-half (1/2) of the escrow fees.
- (c) Prepare, at its cost, the General Warranty Deed.

- (d) Pay the costs to obtain, deliver and record all documents other than those to be recorded at SELLER's expense.
- (e) Pay the BUYER's expenses or attorney fees.
- (f) Pay the additional premium for the survey/boundary deletion in the title policy, if the deletion is requested by BUYER.
- (g) Pay the costs of work required by BUYER to have the survey reflect matters other than those required under this contract.

#### ARTICLE VI SPECIAL CONDITIONS

6. BUYER, at its own expense, shall install a street light on George Bush East near the restaurant located on the property.

#### ARTICLE VII BREACH BY SELLER

7.1 In the event SELLER fails to fully and timely perform any of its obligations under this Contract or fails to consummate the sale of the PROPERTY for any reason except BUYER's default, BUYER may:

- (a) enforce specific performance of this agreement;
- (b) bring suit for damages against SELLER; and/or
- (c) terminate this contract and initiate condemnation proceedings.

#### ARTICLE VIII BREACH BY BUYER

8.1 In the event BUYER fails to consummate the purchase of the PROPERTY (BUYER being in default and SELLER not being in default hereunder), SELLER shall have the right to bring suit against BUYER only for expectancy and incidental damages, if any.

ARTICLE IX  
MISCELLANEOUS

9.1 Survival of Covenants: Any of the representations, warranties, covenants, and agreements of the parties, as well as any rights and benefits of the parties, pertaining to the period of time following the closing date, shall survive the closing and shall not be merged by deed or otherwise be extinguished.

9.2 Notice: Any notice required or permitted to be delivered by this Contract shall be deemed received when sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed to SELLER or BUYER, as the case may be, at the addresses set forth below:

SELLER: Bob R. Davis & Erin Davis  
P.O. Box 564  
Waco, TX 78703

BUYER: City of College Station  
Legal Department  
1101 Texas Avenue  
College Station, Texas 77840

9.3 Texas Law to Apply: This Contract shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created by this Contract are to be performed in Brazos County, Texas.

9.4 Parties Bound: This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns. The persons executing this Contract do so in their capacities as set forth below and in no other capacity whatsoever, and such persons shall have no personal liability for executing this Contract in a representative capacity. All such liability is limited to the principal for which they execute this document as a representative.

9.5 Invalid Provision: In case any one or more of the provisions contained in this Contract shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Contract, and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in the Contract. In lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as part of this Contract a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

9.6 Construction: The parties acknowledge that each party and its counsel have reviewed and revised this Contract and that the normal rule of construction to the effect that any ambiguities are

to be resolved against the drafting party shall not be employed in the interpretation of this Contract or any amendments or exhibits hereto.

9.7 Prior Agreements Superseded: This Contract embodies the entire agreement of the parties and supersedes any and all prior understandings or written or oral agreements between the parties respecting subject matter within and may only be amended or supplemented by an instrument in writing executed by the party against whom enforcement is sought.

9.8 Time of Essence: Time is of the essence to this Contract.

9.9 Gender: Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.

9.10 Multiple Counterparts: This Contract may be executed in a number of identical counterparts. If so executed, each of the counterparts shall, collectively, constitute but one agreement. In making proof of this Contract it shall not be necessary to produce or account for more than one counterpart.

9.11 Memorandum of Contract: Upon request of either party, both parties shall promptly execute a memorandum of this agreement suitable for filing of record.

EXECUTED on this the \_\_\_\_\_ day of \_\_\_\_\_, 2001.

SELLER:


BUYER:

CITY OF COLLEGE STATION

  
BOB R. DAVIS

BY: \_\_\_\_\_  
LYNN McILHANEY, Mayor

Date: \_\_\_\_\_

  
ERIN DAVIS

ATTEST:

\_\_\_\_\_  
CONNIE HOOKS, City Secretary  
Date: \_\_\_\_\_

APPROVED:

\_\_\_\_\_  
THOMAS E. BRYMER, City Manager  
Date: \_\_\_\_\_

Page 8



\_\_\_\_\_  
CHARLES CRYAN, Director of Fiscal Services  
Date: \_\_\_\_\_

\_\_\_\_\_  
City Attorney  
Date: \_\_\_\_\_

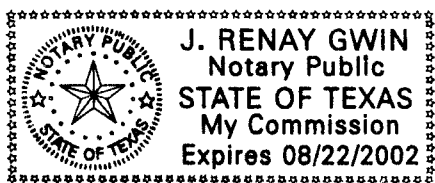
THE STATE OF TEXAS     §  
                                   §           ACKNOWLEDGMENT  
COUNTY OF BRAZOS     §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2001,  
by LYNN McILHANEY, as Mayor of the CITY OF COLLEGE STATION, a Texas Home Rule  
Municipal Corporation, on behalf of said municipality.

\_\_\_\_\_  
NOTARY PUBLIC in and for  
the STATE OF TEXAS

THE STATE OF TEXAS     §  
                                   §           ACKNOWLEDGMENT  
COUNTY OF BRAZOS     §

This instrument was acknowledged before me on the 4th day of June, 2001,  
by BOB R. DAVIS and ERIN DAVIS.



J. Renay Gwin  
NOTARY PUBLIC in and for  
the STATE OF TEXAS

Page 9

Contract No. \_\_\_\_\_  
/o/group/legal/projects/geobushext/davis/realestk.doc  
Prepared byRN:jls; 05/16/01; Rev. 05/30/01

**METES AND BOUNDS DESCRIPTION  
OF A  
0.536 ACRE TRACT  
PORTION OF LOT 1A  
LACOUR SUBDIVISION  
COLLEGE STATION, BRAZOS COUNTY, TEXAS**

METES AND BOUNDS DESCRIPTION OF ALL THAT CERTAIN TRACT OR PARCEL OF LAND LYING AND BEING SITUATED IN COLLEGE STATION, BRAZOS COUNTY, TEXAS. SAID TRACT BEING THE PORTION OF LOT 1A, LACOUR SUBDIVISION, SHOWN AS THE FUTURE EXTENSION OF GEORGE BUSH DRIVE EAST, ACCORDING TO THE PLAT RECORDED IN VOLUME 3510, PAGE 191 OF THE OFFICIAL PUBLIC RECORDS OF BRAZOS COUNTY, TEXAS.

SAID TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

**BEGINNING** AT A ½ INCH IRON ROD FOUND ON THE SOUTHEAST LINE OF HARVEY ROAD (STATE HIGHWAY NO. 30 - 120' R.O.W.) MARKING THE WEST CORNER OF SAID LOT 1A AND THE NORTH CORNER OF THE BOARDWALK, ACCORDING TO THE PLAT RECORDED IN VOLUME 498, PAGE 327 OF THE DEED RECORDS OF BRAZOS COUNTY, TEXAS;

**THENCE:** N 45° 45' 53" E ALONG THE SOUTHEAST LINE OF HARVEY ROAD FOR A DISTANCE OF 70.00 FEET TO A POINT MARKING THE NORTH CORNER OF THIS HEREIN DESCRIBED TRACT, FOR REFERENCE A 5/8 INCH IRON ROD FOUND ON THE SOUTHEAST LINE OF HARVEY ROAD MARKING THE COMMON CORNER OF SAID LOT 1A AND LOT 1B, LACOUR SUBDIVISION, BEARS: N 45° 45' 53" E FOR A DISTANCE OF 179.33 FEET;

**THENCE:** S 44° 14' 07" E THROUGH SAID LOT 1A FOR A DISTANCE OF 204.97 FEET TO A POINT MARKING THE BEGINNING OF A CLOCKWISE CURVE HAVING A RADIUS OF 603.80 FEET;

**THENCE:** CONTINUING THROUGH SAID LOT 1A AND ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 09° 02' 49" FOR AN ARC DISTANCE OF 95.34 FEET (CHORD BEARS: S 39° 42' 43" E - 95.24 FEET) TO A POINT MARKING THE ENDING POINT OF SAID CURVE;

**THENCE:** S 35° 11' 18" E CONTINUING THROUGH SAID LOT 1A FOR A DISTANCE OF 38.47 FEET TO A POINT ON THE SOUTHEAST LINE OF SAID LOT 1A, FOR REFERENCE A 5/8 INCH IRON ROD FOUND MARKING A COMMON CORNER OF SAID LOT 1A AND LOT 1B BEARS: N 33° 59' 32" E FOR A DISTANCE OF 200.53 FEET;

**THENCE:** S 33° 59' 32" W ALONG THE SOUTHEAST LINE OF SAID LOT 1A FOR A

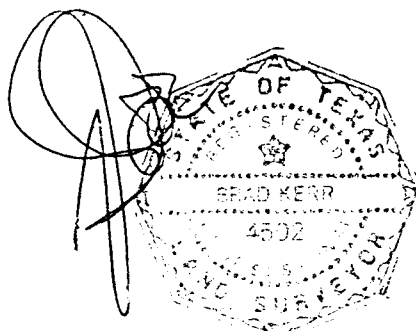
**EXHIBIT A**

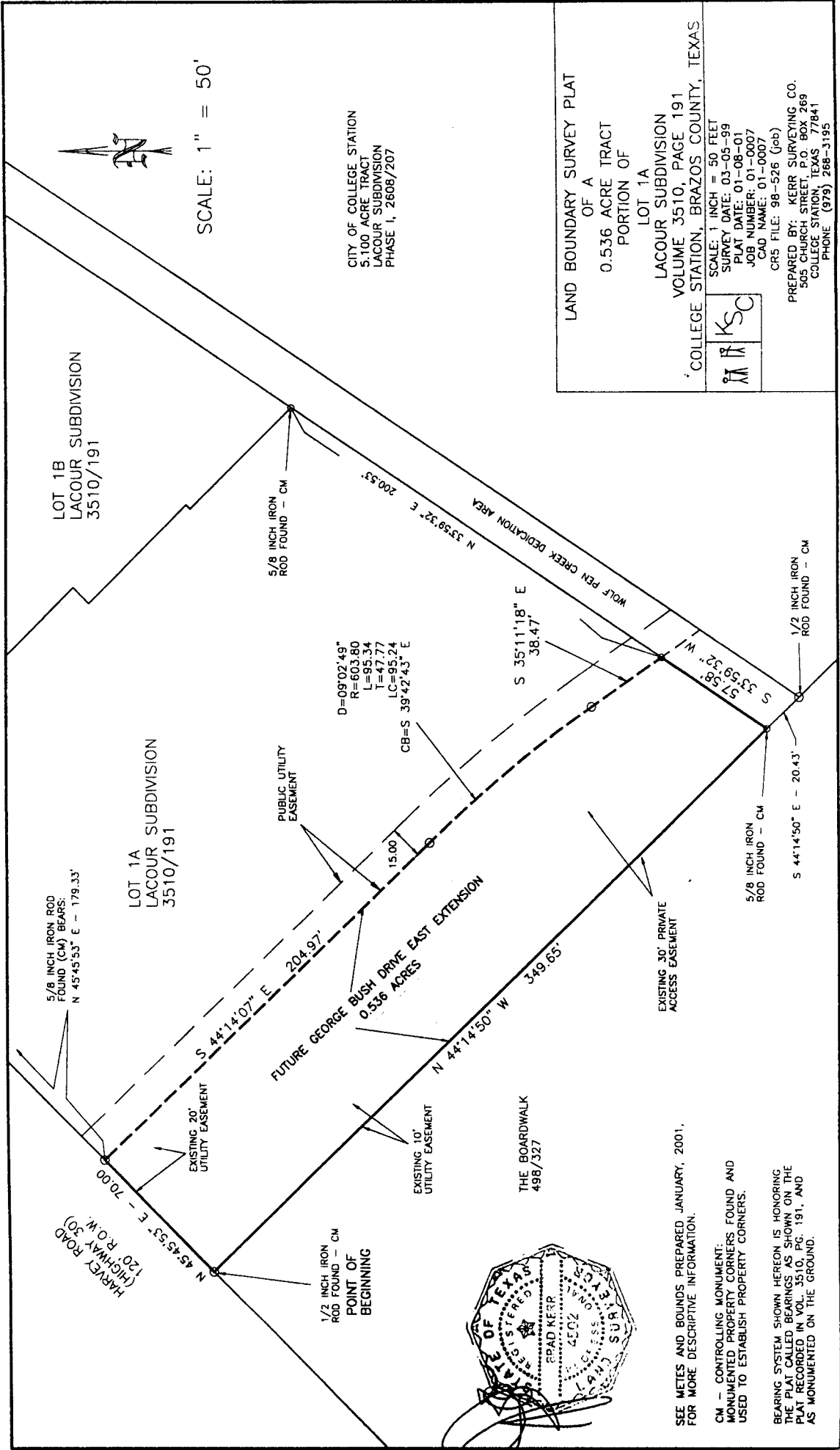
DISTANCE OF 57.58 FEET TO A 5/8 INCH IRON ROD FOUND ON THE NORTHEAST LINE OF THE BOARDWALK MARKING THE SOUTH CORNER OF SAID LOT 1A;

**THENCE:** N 44° 14' 50" W ALONG THE COMMON LINE OF SAID LOT 1A AND THE BOARDWALK FOR A DISTANCE OF 349.65 FEET TO THE POINT OF BEGINNING CONTAINING 0.536 OF AN ACRE, MORE OR LESS, AS SURVEYED ON THE GROUND MARCH, 1999. BEARING SYSTEM SHOWN HEREIN IS BASED ON THE PLAT CALL BEARING OF LACOUR SUBDIVISION, 3510/191.

BRAD KERR  
REGISTERED PROFESSIONAL  
LAND SURVEYOR No. 4502

D:\WORK\MAB\01-0007.MAB





LAND BOUNDARY SURVEY PLAT  
OF A  
0.536 ACRE TRACT  
PORTION OF  
LOT 1A  
LACOUR SUBDIVISION  
VOLUME 3510, PAGE 191  
COLLEGE STATION, BRAZOS COUNTY, TEXAS

**KSC**

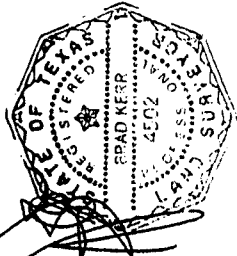
SCALE: 1 INCH = 50 FEET  
SURVEY DATE: 03-05-99  
PLAT DATE: 01-08-01  
JOB NUMBER: 01-0007  
CAD NAME: 01-0007  
CRS FILE: 98-526 (job)

PREPARED BY: KERR SURVEYING CO.  
505 CHURCH STREET, P.O. BOX 269  
COLLEGE STATION, TEXAS 77841  
PHONE (979) 268-3195

SEE METES AND BOUNDS PREPARED JANUARY, 2001,  
FOR MORE DESCRIPTIVE INFORMATION.

CM - CONTROLLING MONUMENT:  
MONUMENTED PROPERTY CORNERS FOUND AND  
USED TO ESTABLISH PROPERTY CORNERS.

BEARING SYSTEM SHOWN HEREON IS HONORING  
THE PLAT CALLED BEARINGS AS SHOWN ON THE  
PLAT RECORDED IN VOLUME 3510, PAGE 191, AND  
AS MONUMENTED ON THE GROUND.



**EXHIBIT "B"**

**GENERAL WARRANTY DEED**

**DATE:** \_\_\_\_\_

**GRANTOR:**

**GRANTOR'S MAILING ADDRESS:** \_\_\_\_\_  
(including county) Brazos County  
College Station, Texas 77840

**GRANTEE:** CITY OF COLLEGE STATION, TEXAS

**GRANTEE'S MAILING ADDRESS:** 1101 Texas Avenue  
(including county) Brazos County  
College Station, Texas 77840

**CONSIDERATION:** Ten Dollars (\$10.00) and other good and valuable consideration.

**PROPERTY:**

**RESERVATIONS FROM AND EXCEPTIONS TO CONVEYANCE AND WARRANTY:**

1. Easements and Building Lines as shown on plat recorded in Volume \_\_\_\_\_, Page \_\_\_\_\_, of the Deed Records of Brazos County, Texas.
- 2.
- 3.

GRANTOR waives all rights with respect to the surface and no owner of the mineral estate shall ever have rights of ingress or egress except as may have been reserved by GRANTOR under the reservations and exceptions expressly listed in this deed or its predecessors in title.

GRANTOR, for the consideration and subject to the reservations from and exceptions to conveyance and warranty, GRANTS, SELLS, and CONVEYS to GRANTEE the property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to GRANTEE and GRANTEE's successors and assigns forever. GRANTOR bind GRANTOR and GRANTOR's heirs, executors and administrators, to warrant and forever defend all and singular the property to GRANTEE and GRANTEE's successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the reservations from and exceptions to conveyance and warranty.

When the context requires, singular nouns and pronouns include the plural.

\_\_\_\_\_  
NAME

THE STATE OF TEXAS     )  
                                  )     ACKNOWLEDGMENT  
COUNTY OF BRAZOS     )

This instrument was acknowledged before me on this the \_\_\_\_ day of \_\_\_\_\_, 2001, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for the State of Texas

**PREPARED IN THE OFFICE OF:**

City of College Station  
Legal Department  
P. O. Box 9960  
College Station, Texas 77842-9960

**RETURN ORIGINAL DOCUMENT TO:**

City of College Station  
Legal Department  
P. O. Box 9960  
College Station, Texas 77842-9960